

DIVISION OF MINES	CHAPTER: IV Inspections
PROCEDURES MANUAL	
	PROCEDURE NO: 1.04.07
	ISSUE DATE: January 1, 1997
SUBJECT: Independent Contractors	LAST REVISED:

OBJECTIVE AND INTENT

To provide guidelines for determining proper enforcement actions in situations where contractors are working on licensed mine sites.

GENERAL

- Section 45.1-161.8 of the Mine Safety Act defines an operator as any person who operates, controls or supervises a mine or any independent contractor performing services or construction at such mine.
- Section 45.1-161.14 of the Mine Safety Act requires an operator of any mine or his agent to operate his mine in full conformity with the Act. This guidance does not limit a licensed mine operator's compliance responsibilities under the Act.
- Section 45.1-161.90 of the Mine Safety Act requires a mine inspector with reasonable cause to believe that a violation of the Act has occurred to issue a Notice of violation to the person (operator, contractor or individual) who is responsible for the violation.

PROCEDURE

1. INDEPENDENT CONTRACTOR IDENTIFICATION

- In order to recognize the separate existence and thus responsibility of an independent contractor the Division must have documentation of that existence. Without such documentation the inspector should consider that the licensed mine operator is the party solely responsible for the site. With the necessary identifying information, the inspector may proceed to analyze the apportionment of responsibility among the separate entities operating on the site.

- The licensed operator must provide the inspector with the following information to establish the existence of an independent contractor on the licensed mine site:
 - a. The contractor's name, business address and business telephone number;
 - b. A description of the scope of the work to be performed by the contractor and the work to be performed on the mine site;
 - c. The contractor's MSHA identification number, if any; and
 - d. The contractor's address of record for service of citation, or other documents involving the independent contractor.

2. ISSUING NOTICES OF VIOLATIONS AND CLOSURE ORDERS TO INDEPENDENT CONTRACTORS

- In deciding to whom to issue a violation, the inspector should take into account the following factors:
 - a. Whether the mine operator (i) contributed to the existence of a violation by any act, (ii) knew of a violation and failed to act to have the violation corrected, or (iii) should have known from an inspection required under the Mine Safety Act of the occurrence or continued existence of a violation, when the violation happened in the course of the contractor's work.
 - b. The licensed mine operator's miners were exposed to a hazard created by the violation.
- Based on these criteria, the inspector should then determine the responsible person or persons for each violation and cite them accordingly.